

Conversely, respondent requests the Appeals Board to affirm the Administrative Law Judge's finding that claimant failed to prove she contracted HCV while working for the respondent. Respondent contends claimant had a history of illegal drug use and the more

likely explanation of how she contracted HCV is through her past illegal drug use and not her employment.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the preliminary hearing record and considering the briefs of the parties, the Appeals Board makes the following findings and conclusions:

The Administrative Law Judge's preliminary hearing Order Denying Compensation should be affirmed.

Claimant worked as a custodian for the respondent and her job duties exposed her to human blood and other human body fluids. She testified that at various times she experienced cuts and punctures from sharp objects contained in the trash. She also testified that at various times gloves were not available so she had to perform her work duties without gloves. During these periods, her hands became dry and cracked open. Her cracked hands were then directly exposed to human blood and other human body fluids.

At the preliminary hearing, medical report letters from claimant's two treating physicians were admitted into evidence. In a letter dated January 13, 1999, Clifton C. Jones, M.D., reported claimant had given him a history that she had not had any past blood transfusions, had not worked in a health care setting, and did not have a history of IV drug use. Based on that history, the doctor opined claimant did not have any identifiable risk factors for contracting HCV other than her custodian work she had performed for the respondent. In a letter dated February 4, 1999, Kendall M. Wright, M.D., also had a history from the claimant that she had not participated in any risk behavior for the spread of HCV, i.e., "drug use, etc." Based on that history, Dr. Wright opined it was highly probable that claimant contracted HCV through her work activities for respondent.

But claimant testified she had a history of past illegal drug use. Claimant testified, however, she had, on only one occasion, experienced IV drug use and she used a fresh needle on that occasion. She also testified she had used cocaine in the past on approximately 25 separate occasions. But she was sure on each occasion she had used her own straw to "snort" the cocaine and had not shared a straw with another drug user.

Medical educational information was admitted into the preliminary hearing record concerning HCV. That medical information indicated IV drug users represented the largest single group of people who contract HCV. Also, cocaine users have an abnormally high risk of contracting HCV because they frequently share snorting straws that may have small amounts of blood-carrying mucus on them.

The respondent had claimant examined by Norton J. Greenberger, M.D., Professor and Chairman of the Department of Medicine at the University of Kansas Medical Center.

In a letter report dated April 29, 1999, Dr. Greenberger believed it was unlikely claimant could have contracted HCV while performing custodial job duties for the respondent. But if there was an accidental transmission, this would more likely occur when claimant was either cut or punctured by sharp objects in trash bags. The likelihood of contracting HCV from this type of exposure is small. For example, if a health care provider received a needle stick from a patient known to have HCV, the risk of transmission from this obvious exposure is only 2 to 6 percent.

The Appeals Board concludes, at this stage of the proceedings, that the more likely source of claimant's HCV infection is her past illegal drug use. The Appeals Board questions claimant's testimony that she only experienced IV drug use on one occasion and specifically remembers using a fresh needle on that one occasion. It is also questionable that claimant is able to specifically recall snorting cocaine on some 25 separate occasions and that she used her own straw on each occasion instead of sharing a straw with another drug user. Claimant's credibility is also called into question when she testified she gave both of her treating physicians a history of her past drug use. But neither physician had that history when they expressed their opinions in their medical reports on how claimant contracted HCV.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Administrative Law Judge Brad E. Avery's preliminary hearing Order Denying Compensation dated May 14, 1999, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of September 1999.

BOARD MEMBER

c: John J. Bryan, Topeka, KS
Jeff K. Cooper, Topeka, KS
Brad E. Avery, Administrative Law Judge
Philip S. Harness, Director